

STATE OF MICHIGAN
COURT OF APPEALS

In re GRD, Minor.

UNPUBLISHED
October 18, 2016

No. 333131
Saginaw Circuit Court
Family Division
LC No. 15-008028-AD

Before: K. F. KELLY, P.J., and O'CONNELL and BOONSTRA, JJ.

PER CURIAM.

Respondent-father appeals as of right from an order terminating his parental rights to a child under the Adoption Code, MCL 710.21 *et seq.* We affirm.

I. FACTUAL BACKGROUND

Petitioner-mother decided to relinquish her parental rights to the child for the purposes of adoption and petitioned to terminate respondent-father's parental rights. According to petitioner, she was addicted to Vicodin before starting a relationship with respondent, who sold heroin. During the relationship, petitioner became addicted to heroin and became pregnant. Respondent did not provide her with support other than junk food and told petitioner to leave his home early in her pregnancy, at which point she began living in a homeless shelter. Petitioner testified that the only support respondent provided her after that was "one or two packs of cigarettes and maybe \$25." Petitioner attempted to call respondent, but he "wasn't very friendly" and "didn't care about my needs or me being pregnant." Respondent was incarcerated during petitioner's pregnancy for selling heroin and did not provide petitioner with any support after his incarceration.

Respondent testified that he was incarcerated and expected to be released in 2019, though he could be released as soon as 2017 or 2018. According to respondent, he provided petitioner with money before his incarceration, though he could not say exactly how much. Respondent did not provide petitioner with support after his incarceration, despite that he made between \$100 and \$200 a month working in prison. He wanted a paternity test before taking custody of the child, but if the child was his, he would place her in guardianship with his sister until he was released from prison.

The trial court found that respondent had not established a custodial relationship with the child or provided petitioner with support during her pregnancy and that terminating his parental rights was in the child's best interests.

II. ANALYSIS

Respondent contends that the trial court clearly erred by finding he did not support petitioner during the pregnancy, that the trial court improperly considered his incarceration, and that terminating his parental rights was not in the child's best interests. We disagree.

We review de novo questions of law related to the adoption code and review for an abuse of discretion the trial court's decision to grant or deny a petition for adoption. *In re TMK*, 242 Mich App 302, 304; 617 NW2d 925 (2000). The trial court abuses its discretion when its decision falls outside the range of principled outcomes. *In re MKK*, 286 Mich App 549, 564; 781 NW2d 132 (2009). We review the trial court's findings of fact for clear error. *In re BKD*, 246 Mich App 212, 215; 631 NW2d 353 (2001). The trial court has clearly erred if this Court has the definite and firm conviction that it made a mistake. *Id.*

MCL 710.39 provides different standards for putative fathers who have established a relationship or provided support for the child or mother during pregnancy:

(1) If the putative father does not come within the provisions of [MCL 710.39(1)], and if the putative father appears at the hearing and requests custody of the child, the court shall inquire into his fitness and his ability to properly care for the child and shall determine whether the best interests of the child will be served by granting custody to him. If the court finds that it would not be in the best interests of the child to grant custody to the putative father, the court shall terminate his rights to the child.

(2) If the putative father has established a custodial relationship with the child or has provided substantial and regular support or care in accordance with the putative father's ability to provide such support or care for the mother during pregnancy or for either mother or child after the child's birth during the 90 days before notice of the hearing was served upon him, the rights of the putative father shall not be terminated except by proceedings in accordance with [MCL 710.51(6)] or [MCL 712A.2].

Respondent first contends that the trial court's conclusion that MCL 710.39(1) applied in this case was erroneous because he supported petitioner during her pregnancy. In this case, petitioner testified that not only did respondent not provide her with support, he kicked her out of his home and she was forced to reside in a homeless shelter. Respondent admitted that he knew that petitioner was living in a homeless shelter, but stated that it was by her choice. This Court defers to the trial court's ability to determine the credibility of the witnesses. *In re HRC*, 286 Mich App 444, 459; 781 NW2d 105 (2009). We are not definitely and firmly convinced that the trial court made a mistake where it credited petitioner's testimony about the nature of respondent's support.

Second, respondent contends that the trial court should not have terminated his parental rights because under *In re Mason*, 486 Mich 142; 782 NW2d 747 (2010), the trial court should not terminate a parent's rights on the basis of parental incarceration if the parents' relatives can care for the child. Respondent is incorrect. Terminations under the Adoption Code are

completely separate statutory proceedings from terminations under the juvenile code. See *In re Jones*, 286 Mich App 126, 128; 777 NW2d 728 (2009). There is no basis for expanding *Mason*, a juvenile code case, into adoption code cases, particularly not when the statutory language of MCL 710.39(1) requires a respondent to specifically establish *his* fitness and *his* ability to properly care for the child, not the fitness and ability of his family.

Third, respondent contends that the trial court failed to make findings regarding the best interest factors. Unlike MCL 710.39(2), which requires the trial court to make specific findings before terminating the parental rights of a father who has established a relationship with the child, MCL 710.39(1) only requires the trial court to inquire into the father's fitness and abilities. In this case, the trial court found that respondent was not able to care for the child because he was incarcerated. Respondent testified that he was incarcerated until sometime between 2017 and 2019. Petitioner also testified that respondent both used and sold heroin. Given these facts, we are not definitely and firmly convinced that the trial court made a mistake when it found that respondent lacked fitness and an ability to care for the child.

In sum, we conclude that the trial court properly applied the Adoption Code, that its findings were not clearly erroneous, and that its decision was not an abuse of discretion.

We affirm.

/s/ Kirsten Frank Kelly

/s/ Peter D. O'Connell

/s/ Mark T. Boonstra